IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.A.No.197 SB of 1995
Date of decision:4.4.2007

Gurmit Singh

…..Appellant

v.

State of Punjab

…..Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

Present: Mr. DS Pheruman, Advocate for the appellant.
Mr. DS Brar, DAG, Punjab.

JUDGMENT:

The appellant challenges his conviction under section 326 IPC, for which he stands sentenced to undergo RI for two years and to pay fine of Rs.500/-, in default to undergo further RI for three months. He has also been convicted under section 323 IPC, for which he has been sentenced to undergo RI for three months. Both the sentences are to run concurrently.

Case of the prosecution is that on 29.8.1993 at 5 PM, Mohinder Singh PW3 was grazing cattle in his fields. His nephew Malkiat Singh PW4 was cutting green fodder in the adjoining field.

The appellant was playing cards with some other boys. Mohinder Singh told the appellant that they should not create nuisance by raising hue and cry. Feeling annoyed over this, the appellant alongwith other boys left the place but after some time, the appellant came with a 'gandasa' in his hand and raised a 'lalkara' that Mohinder Singh will be taught a lesson for stopping them from playing cards. He gave a 'gandasa' blow on the head of Mohinder Singh. He gave another blow but since Mohidner Singh raised his left hand, the blow landed on the left hand instead of head. Malkiat Singh raised alarm, on which the accused ran away with his weapon. Mohinder Singh was taken to the hospital and was medically examined by Dr. Paramjit Kaur PW5. On receiving a message from the hospital, ASI Chand Singh PW8 went to the hospital and recorded the statement of Mohinder Singh on 30.8.1993 at 2 PM. After completing investigation, he challaned the accused.

The prosecution examined PW1 C. Gurmit Singh, who deposed about the disclosure statement made by the accused and the recovery of the 'gandasi' at his instance. PW2 C.Harbhagwan Singh deposed that Malkiat Singh had produced before the police blood stained clothes which were sealed into parcel with the seal bearing impression 'CS'. PW3 Mohinder Singh, injured and PW4 Malkiat Singh PW deposed about the present occurrence. PW5 Dr.

Paramjit Kaur proved medico legal report Ex.PE. PW6 Narinder Singh proved scaled plan Ex.PH. PW7 ASI Harbhajan Singh and PW8 Chand Singh deposed about the investigation conducted by them in this case.

The accused denied the prosecution allegations and stated that he was falsely implicated at the instance of Kundan Singh, Sarpanch, since he was supporter of Rajpal Singh, opponent of Kundan Singh. He examined DW1 Kashmir Kaur who deposed that Mohinder Singh was admitted in the Hospital on 30.8.1993. DW2 Pritam Singh was examined to depose that Mohinder Singh received injuries near a mosque.

After considering the evidence on record, the trial court held the case of the prosecution to be proved beyond reasonable doubt.

Learned counsel for the appellant questioned the conviction of the appellant and stated that in the alternative, the appellant may not be sent back to custody as he had been on bail for more than ten years and he had also remained in custody for some period. He submitted that there was delay in lodging the FIR and injuries may have been caused to Mohinder Singh by someone else and the appellant was implicated on account of enmity. It was also submitted that turban which the injured may have been wearing, was not produced to show any cut.

Learned counsel for the State supported the conviction and sentence of the appellant.

I have considered the rival submissions and perused the record of the case.

Reference to the record shows that Dr. Paramjit Kaur, as per medico-legal report Ex.PE, examined Mohinder Singh at 10 AM, on 30.8.1993 and found following injuries on his person:-

> "1. An incised wound 7x1 cm on the left side of the head, 7 cm from the hair line, 3 cm from the mid line of the head, bone cut underneath, blood oozing.
>
> 2.An abrasion 1-1/2 x ½ cm on the middle of dorsem of left hand, swelling plus."

From the above,it is clear that Mohinder Singh received head injury and his bone was cut underneath the injury. PW3 Mohinder Singh, injured clearly supported the version given in the FIR and his version was also corroborated by PW4 Malkiat Singh and by the medical evidence. There is no reason whatsoever to disbelieve the evidence led by the prosecution, which is forthright and reliable. Mere delay in lodging of the FIR could be no ground to throw out the prosecution case. The defence version is not at all probable. Mohinder Singh having received grievous injury on the head, the nature and seat of injury shows that the injury could not

be self-suffered. He had no reason to falsely implicate the accused.

Delay in FIR may not be fatal in every case and unexplained delay requires the court to scrutinise the evidence with greater care and caution. In the present case, evidence of the prosecution being reliable, mere delay could not be accepted as a ground to reject the version of the prosecution. Reference may be made to the law laid down by the Hon'ble Supreme Court in **Tara Singh and others v. The State of Punjab,** AIR 1991 SC 63.

Thus, conviction of the appellant is fully justified and is affirmed.

Coming to the question of sentence, learned counsel for the appellant submitted that the occurrence took place about 14 years back and since the appellant has remained on bail, at this stage, instead of sending the appellant to custody, it may be appropriate to require the appellant to pay adequate compensation to the injured, as at this stage,if the accused is to be sent to custody, it may rekindle the flames of anger and disturb the social harmony in the village life.

I have heard learned counsel for the State on this issue.

There appears to be merit in the contention advanced.

In **Hari Krishan and State of Haryana v. Sukhbir Singh,** AIR 1988 SC 2127, the Hon'ble Surpeme Court referring to section 357 of the Code of Criminal procedure, observed:-

> "10....This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.
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> 11.The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation,if necessary by instalments, may also be given. The Court may enforce the order by imposing sentence in default."

The Hon'ble Supreme Court in that case awarded compensation of Rs.50,000/-.

Having regard to the facts and circumstances of the case, ends of justice will be met if substantive sentence awarded to the appellant is reduced to the period already undergone, subject

to his paying compensation of Rs.40,000/- to the injured Mohinder Singh. In default,he will undergo RI for one year. The appellant will be at liberty to either pay the amount of compensation direct to the injured Mohinder Singh and furnish the receipt to the trial court or deposit the amount before the trial court, within six months, on which the trial court will disburse the same to the injured.

The appeal is disposed of accordingly.

April 4, 2007 (Adarsh Kumar Goel)
'gs' Judge